

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LISA JOHNSON,

Plaintiff,

- against -

HISTORIC RAILROAD SQUARE ASSOCIATION

Defendant.

Docket No. 3:19-cv-5859

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Lisa Johnson (“Johnson” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Historic Railroad Square Association (“Historic Railroad” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of a guitar, owned and registered by Johnson, a professional photographer. Accordingly, Johnson seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant reside and/or transacts business in California.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Johnson is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at 9517 Canyon Mesa Drive, Las Vegas, Nevada 89144.

6. Upon information and belief, Historic Railroad is a business corporation duly organized and existing under the laws of the state of California with a place of business at 9 Fourth Street, Santa Rosa, California 95401. Upon information and belief, Historic Railroad is registered with the California State Department of Corporations to do business in California. At all times material, hereto, Historic Railroad has owned and operated a website at the URL: www.RailRoadSquare.net (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Johnson photographed a guitar (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Johnson is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-163-300.

B. Defendant’s Infringing Activities

11. Historic Railroad ran the Photograph on the Website. A screenshot of the Photograph on the Website is attached hereto as Exhibit B.

12. Historic Railroad did not license the Photograph from Plaintiff for its Website, nor did Historic Railroad have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST HISTORIC RAILROAD)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Historic Railroad infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Historic Railroad is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Historic Railroad have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
HISTORIC RAILROAD
(17 U.S.C. § 1202)

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.

19. Upon information and belief, Historic Railroad knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

20. The conduct of Historic Railroad violates 17 U.S.C. § 1202(b).

21. Upon information and belief, Historic Railroad falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

22. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Historic Railroad intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph. Historic Railroad also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph.

23. As a result of the wrongful conduct of Historic Railroad as alleged herein, Plaintiff is entitled to recover from Historic Railroad the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Historic Railroad because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

24. Alternatively, Plaintiff may elect to recover from Historic Railroad statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Historic Railroad be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Historic Railroad be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
6. That Plaintiff be awarded punitive damages for copyright infringement;
7. That Plaintiff be awarded attorney's fees and costs;
8. That Plaintiff be awarded pre-judgment interest; and
9. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 19, 2019

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